

**\* \* REASONS FOR AMENDMENTS AND REMARKS \* \***

Applicant wishes to acknowledge with appreciation the Examiner's analysis and efforts in examining this application.

**I. ELECTION REQUIREMENT RESPONSE**

As a preliminary matter, in response to the Examiner's election requirement on pages 2-3 of the Office Action, the Applicant confirms that species I (Figs. 1, 3 and 5-8) which includes Claims 1-9 and 12-14 is elected. This statement serves as affirmation of the election, as required by the Examiner.

**II. CLAIMS AMENDMENTS**

Claim 1 has been amended so that its last line reads, "selectively attachable to each other," rather than "each another." No objection was made to this claim, but the amendment was made nonetheless for clarity purposes. No disclaimer of equivalents should be construed by this amendment.

**III. CLAIM REJECTIONS**

On pages 3-7, the Examiner rejected Claims 1-9 and 12-14 under 35 U.S.C. § 103(a) as being obvious. The Applicant respectfully requests reconsideration of these rejections. As discussed in greater detail below, it is believed that the claims are allowable, and it is respectfully requested that these rejections be withdrawn.

**A. The combination Ward and Girardin fails to establish a *prima facie* case of obviousness against Claims 1, 2, 4-9 and 12.**

On pages 3-5 of the Official Action, the Examiner rejected Claims 1, 2, 4-9 and 13 under 35 U.S.C. § 103(a) as being obvious under Ward (U.S. Patent No. 5,203,613) in view of Girardin (U.S. Patent No. 6,547,334).

The Examiner alleges that Ward teaches a shopping cart having a seat for supporting a juvenile, a first bar, a second bar extending from the first bar, and a child restraining apparatus for restraining the juvenile in the seat of the shopping cart, the child restraining apparatus including: first and second adjustable shoulder straps (12, 14) positionable over the juvenile's shoulders, each of the first and second shoulder straps (12, 14) having first and second ends (22); wherein the first ends (22) of the first and second shoulder straps (12, 14) are selectively attachable to the first bar (50); the shoulder straps (12, 14) are positioned substantially parallel to each other; and a belt (16), the belt (16) having first and second ends, the first and second ends are attachable to each other. The Examiner asserts that Ward further teaches a clasp on at least one end of the shoulder straps (12, 14) as stated in column 5, lines 8-15.

The Examiner concedes that Ward lacks the teaching of a chest panel, a crotch strap and an adjustable belt. The Examiner alleges further, however, that Girardin teaches a cross strap (27 in Figure 1) and a chest panel (36 in Figures 3 and 6). The Examiner contends that Girardin teaches a padded adjustable crotch strap (24) attached to the cross strap (27) and that the crotch strap (24) extends from the cross strap (27) in a direction opposed to first and second shoulder straps (5, 6). The Examiner asserts that column 2, lines 24-67 of Girardin further teaches an adjustable belt (9) and padded areas (30, 31).

The Examiner concludes that based on the teachings of Girardin, it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to attach

a chest panel to shoulder straps to provide additional support for the child and to reduce the chances of side slipping out of the shoulder straps, as taught in the optional variation in Figures 3 and 6 and in column 2, lines 58-62, of Girardin.

Furthermore, pursuant the interview summary report mailed on December 2, 2005, the Examiner alleges that Ward ('613) clearly teaches a belt positionable around the torso of a juvenile and second bar (as shown in figures 8 and described in column 5, lines 63-68 and column 6, lines 1-3). The Examiner also alleges that Ward, at the last line of column 5 and the first three lines of column 6, anticipates the use of a belt on a shopping cart "threaded through the bars of the cart," the ends of the belt being attachable to each other as shown in figures 8 and 10, and Figures 3 and 4 showing strap ends attached to the respective strap. The Applicant notes in a Response mailed December 30, 2005, that the Examiner alleges the chest panel is the only teaching from Girardin that is combined with the teaching of Ward with respect to Claim 1.

**i. Legal standard to establish a *prima facia* case of obviousness.**

To establish a *prima facia* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art to modify or to combine the references' teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (a reference is when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claim combination and the reasonable expectation of success must both be found in the prior art and not based on Appellants disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991), (see also MPEP § 2143).

With respect to motivation, the prior art must suggest the desirability of the claimed invention, pursuant MPEP 2143.01 Section I:

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000).

Furthermore, if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). MPEP 2143.01 Section V. Also, the same is true if the combination of the prior art would change the principle of operation of the prior art invention being modified. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). MPEP 2143.01 § VI. Such teachings cannot be sufficient to render claims *prima facie* obvious. Id.

With respect to the reasonable expectation of success requirement, some predictability is required to show such a reasonable expectation at the time the invention was made. See MPEP § 2143.02. In addition, evidence can be presented to support the position that no reasonable expectation of successes exists. Id.

With respect to teaching all of the claim limitations by the prior art, "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." *In*

*re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970), MPEP § 2143.03.

Furthermore, all of the limitations of the claims must be considered and given weight. Id.

ii. **Claim 1 is allowable because the combination of Ward and Girardin fails to teach or suggest the limitation of “the second ends of the first and second shoulder straps are attached to the chest panel.”**

The Examiner’s rejection of Claim 1 includes the allegation that Ward teaches a child restraining apparatus including first and second shoulder straps (12, 14) having first and second ends (22). The Examiner also alleges that the first ends (22) of the first and second shoulder straps (12, 14) are selectively attachable to the first bar (50). From the Interview Summary Report mailed December 2, 2005, the Examiner further alleges that Figures 3 and 4 of Ward “show strap ends attached to the respective strap.” And finally, the Examiner identifies that the disclosure in Girardin includes a chest panel. To establish a *prima facie* case of obviousness, however, the Examiner must demonstrate that there is motivation to modify or to combine the references’ teachings, be a reasonable expectation of success, and the prior art reference teaches all of the claim limitations.

The Examiner’s argument is silent on how the combination of Ward and Girardin teaches the limitation of “**the second ends of the first and second shoulder straps are attached to the chest panel**” pursuant Claim 1. Long established patent law as recited in *In re Wilson* and MPEP § 2143.03 requires that all the words of a claim must be considered when judging the patentability of that claim against the prior art. For this reason alone, withdrawal of the rejection is warranted and is respectfully requested. Nevertheless, the combination of Ward and Girardin fails to teach these limitations.

Proper motivation to establish a *prima facie* case of obviousness requires an explicit or implicit teaching or suggestion to combine Ward and Girardin without making the

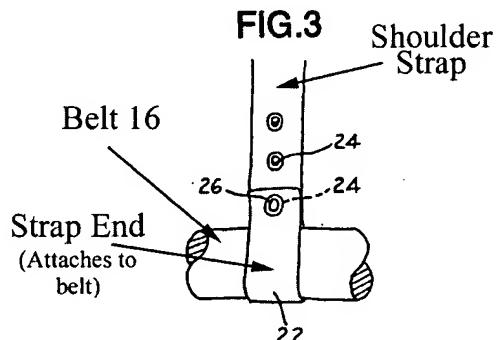
references unsatisfactory for their intended purposes, or changing the principle operation of those references. See *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); MPEP § 2143.01 part V; *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959); and MPEP § 2143.01 part VI.

In this case, not only does the rejection omit making the specific argument, but the rejection itself teaches away from the claimed invention. In particular, the Examiner recognizes that Ward discloses “strap ends attached to the respective strap.” *Interview Summary Report*, mailed December 2, 2005. The “strap ends” are ends 22 of shoulder straps 12 and 14, and the “respective strap” is belt 16, in Ward. The Examiner even directs specific attention to Fig. 3 which is reproduced, and annotated, herein to the right<sup>1</sup>. There is no teaching or suggestion that ends 22 should be attached to anything else but a belt strap or shopping cart. Every Figure in Ward teaches ends 22 being attached to a waist belt (see Figs. 1, 2, 3, 8, 9, 10) or shopping cart cross bar (see Figs. 5, 6, 7). In other words, ends 22 are needed to attach to structures like belts or shopping cart bars to hold the child in the seat.

The specification of Ward is also replete with descriptions of these functions. For instance:

The end portions of straps 12 and 14 are attached to the belt or frame member 16 so as to be readily releasable as illustrated in detail in Fig. 3.

Col. 4, lns. 66-68.



**FIG.3**

Shoulder Strap

Belt 16

Strap End  
(Attaches to  
belt)

22

*Illustration 1*

Fig. 3 of Ward requires its “ends” to attach to a belt. The ends are not available to attach to a chest panel.

<sup>1</sup> The annotations to the drawings throughout this response often include large arrowed lines with corresponding text. If the Examiner has any confusion as to what portions of the drawings are annotations and which are original markings, the original drawings should be consulted. In addition, including the drawings and the annotations herein should not be construed as either limiting the claims to a particular illustrated embodiment or attempting to incorporate the specification into the claims.

One end of each strap is fastened to the belt 16a near where it is fastened to the seat back, and the other end is passed over the child's shoulder before fastening at the front, as previously described.

Col. 5, lns. 39-43.

Ward clearly teaches that its shoulder straps have second ends needed for a very particular purpose and are not available to simply be removed and then attached to a chest panel. If the second ends are not available to be attached to either belt 16 or bars 48 and 50, there is no teaching in Ward of a "restraining device." There is nothing for the shoulder straps to attach to for holding the child in place. If, for example, the second ends are attached to a chest panel rather than shopping cart bars, straps 12 and 14 will not restrain the child. This is contrary to the teachings of Ward. In the first embodiment of Ward, the second ends must be available to attach to shopping cart bars. In the second embodiment, the second ends must be available to attach to the waist belt, otherwise straps 12 and 14 will not restrain the child. The Examiner's Interview Summary Report asserts that "Ward ('613) clearly taught a belt positionable around the torso of a juvenile and second bar (as shown in figures 8 and clearly described in column 5, lines 63-68 and column 6, lines 1-3)." Ward, however, continues to state that,

The two straps could be fastened permanently to the shopping cart, stroller, dining chair or other such device, conveniently by rivets or other fasteners which are permanent or not readily released, so that they would not get lost or misplaced.

Col. 6, lns. 4-8.

In other words, the second ends must be attached to the shopping cart to keep the child restrained. Thus, moving ends 22 of shoulder straps 12 and 14 from belt 16 or bars 48 and 50 to a chest panel is clearly unsatisfactory for Ward's intended purpose as restraining device. Such modification changes the principle operation of Ward as well, and is thus contrary to established

law. See *ex parte Hartmann*, 186 USPQ 366 (PO Bd App 1974) (References cannot properly be combined if the effect would be to destroy the invention on which one of the referenced patents is based.) Accordingly, a *prima facia* case of obviousness cannot be established.

The Examiner does allege that motivation exists to combine the references.

Particularly, the Examiner states that,

it would have been obvious to one having ordinary skill in the art, at the time the invention was made, to attach a chest panel to shoulder straps to provide additional support for the child and reduce the chances for side slipping out of the shoulder straps, as taught in the optional variation in Figs. 3 and 6 and in column 2, lines 58-62 of [Girardin].

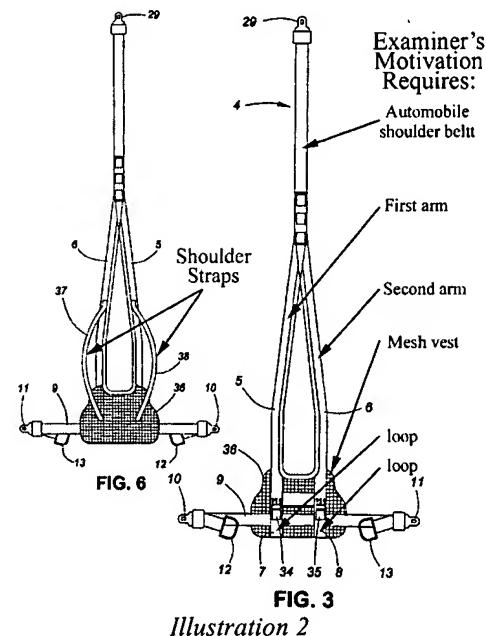
When viewing this “motivation” in complete context, however, Girardin appears to require more than what the Examiner purports. Rather, column 2, lines 58-62 of Girardin also states:

[i]n an optional variation, shoulder belt 4 may be provided with padded areas on each of arms 5, 6 and with a mesh vest 36 adjacent loops 7, 8 so as to provide additional support for the child and to reduce the chances of side slipping out of the shoulder straps.

In other words, Girardin teaches that “to provide additional support for the child and to reduce the chances of side slipping out of the shoulder straps” (identified as 37, 38 of Fig. 6) the restraint requires:

- 1) an automobile shoulder strap (4);
- 2) first and second padded arms (5, 6);
- 3) a mesh vest (36); and
- 4) two loops (7, 8).

The Examiner, however, asserts only the chest panel (or vest) against Claim 1. Here, an automobile seat belt, padded arms and loops, need to be added to satisfy the motivation expressed in Girardin. Furthermore, this modification purportedly keeps a child from slipping out of shoulder straps 37 and 38 of Girardin. Ward, however, already has shoulder straps 12 and 14. Looking at Fig. 3 it appears that arms 5 and 6 are shoulder straps, but, in fact, as shown in Fig. 6, additional shoulder straps 37, 38 are added to the arms 5, 6. Girardin relies on the combination of a chest panel and multiple sets of straps. Also, the Examiner does not explain how the multitude of shoulder straps relate to the Ward reference which already purports to provide a child restraining device for a seating compartment like a shopping cart with one set of straps. See column 1, lines 11-14. Adding extra shoulder straps and padding to a vest does not get to the claimed invention. This is especially the case in light of the fact that the shoulder straps in Ward need to attach to a belt. In any event, these required structures in Girardin are not limitations of Claim 1.



Figs. 3 and 6 of Girardin showing the multiple arms and straps required to restrain a child.

Accordingly, it is believed there is no motivation to modify Ward with Girardin because to do so would destroy the utility of Ward and render the disclosure of Ward unsatisfactory for its intended purpose and change its principle operation, contrary to MPEP § 2143.01.

B. The combination of Ward and Girardin fails to teach or suggest the limitations of “the first ends of each of the first and second belt segments are attached to the chest panel. . .[and] the first and second belt segments extend from the chest panel.”

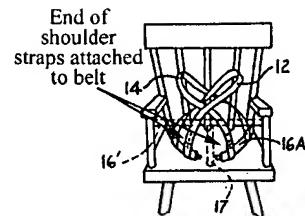
The Examiner alleges that Ward teaches a shopping cart having a seat for supporting a juvenile that includes a belt (16) having first and second ends which are attachable to each other. The Examiner also alleges that the belt is positionable around the torso of a juvenile and a second bar and the ends of the belt are attachable to each other, pursuant Figures 8 and 10. Again, the Examiner purports to rely on Girardin solely for the disclosure of the chest panel.

Nowhere in the Examiner’s analysis, however, are the limitations of the ends of the first and second belt segments being attached to the chest panel and extending therefrom, discussed. First, the Examiner’s motivation for combining the references, which is problematic for the reasons previously discussed, is irrelevant to these limitations because the Examiner’s purported motivation does not consider the interaction between the chest panel and the belt.

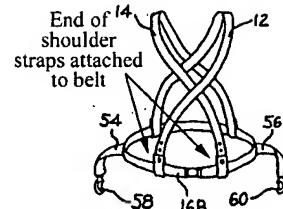
Looking at Figures 8 and 10 of Ward, it is not understood where the motivation is to attach a chest panel to belt 16 which then needs to extend from the chest panel. This is particularly perplexing when shoulder straps 12 and 14 of Ward need to fasten to the belt as

shown. If the shoulder straps no longer need to be attached to the belt and rather have the belt extend from a chest panel, clearly this would change the principle of operation of Ward, since it relies on the attachment of shoulder straps 12 and 14 with belt 16. The combination of Ward and Girardin would also make the intended purpose of Ward, which includes attaching shoulder straps 12 and 14 to the bars of a shopping cart, unsatisfactory. Accordingly, the combination of Ward and Girardin fails to teach all of the claim limitations in Claim 1, and is contrary to MPEP § 2143.01.

**FIG. 8**



**FIG. 10**



*Illustration 3*

Figs. 8 and 10 of Ward showing ends of shoulder straps 12 and 14 attaching to belts 16A and B.

As previously discussed, all words in a claim must be considered in judging patentability of that claim against the prior art. The combination of Ward and Girardin does not teach all the limitations of Claim 1. The limitation of the second ends of the first and second shoulder straps, being attached to a chest panel while at the same time first and second belt segments extend from the chest panel and are positionable around the torso of a juvenile and then are selectively attachable to each other, is not taught or suggested by the prior art.

It is, therefore, respectfully believed that Claim 1, as amended, is allowable over the combination of Ward and Girardin. Withdrawal of the rejection is respectfully requested. Furthermore, dependent Claims 2-9 and 12-14 should allowable as well. In fact, because the combination of Ward and Girardin is not believed to teach the invention of Claim 1, the rejection of Claim 3 in further view of Divoky et al., the rejection of Claim 12 in further view of Morris, and the rejection of Claim 14 in further view of Martin are all respectfully believed moot.

C. **The combination of Ward and Girardin fails to teach or disclose the limitations of “the first end of the crotch strap is attached to the chest panel; and wherein the crotch strap extends therefrom in a direction opposed to the first and second shoulder straps” of Claim 2.**

The Examiner alleges that Girardin clearly teaches a crotch strap attached to a cross strap that can be optionally replaced by a chest panel. Previously, however, the Examiner alleged that a child restraining apparatus having a cross strap is a patentably distinct species from those having chest panels. See Species I vs. Species II at p. 2 of the Office Action. Ward does not disclose a chest panel or crotch strap at all, and Girardin teaches no crotch strap extending from a chest panel.

Accordingly, there is no teaching, suggestion, or motivation to combine and modify the teachings of the prior art to produce the claimed invention. Furthermore, the combination of the prior art fails to teach all of the limitations of the claimed invention making a *prima facia* case of obviousness improper.

D. **The combination of Ward and Girardin fails to teach or disclose the limitations of the first and second shoulder straps, belt segments, and the crotch strap are adjustable with respect to the chest panel of Claims 5, 6, and 8.**

Neither Ward nor Girardin teach or suggest that the first and second ends of the shoulder straps or belt segments attach to the chest panel and extend therefrom, and the belt segments are positionable about the torso of the juvenile and about the second bar of the shopping cart. It is, thus, impossible for those references to teach that the shoulder straps, belt segments, and crotch strap are adjustable, as well. Withdrawal of the rejection is, thus, respectfully requested.

E. **The combination of Ward and Girardin fails to teach or suggest the limitation of “the shoulder straps are positioned substantially parallel to each other” of Claim 13.**

The Examiner alleges that Ward teaches a shopping cart having a child restraining apparatus that includes adjustable shoulder straps “positioned substantially parallel to each other.” It is understood that the claims are to be interpreted pursuant their broadest reasonable interpretation by one skilled in the art pursuant MPEP § 2111, but under no reasonable interpretation can shoulder straps 12 and 14 as taught by Ward be considered “substantially parallel to each other.” By means of an illustrative comparison, the shoulder straps of Fig. 8 (top) of the instant application are shown to the right with straps 12 and 14 from Fig. 10 (bottom) of Ward.

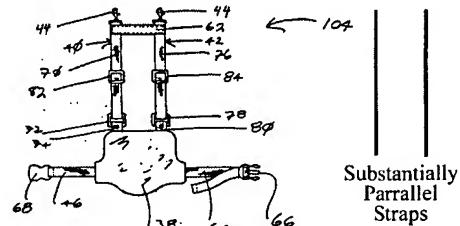


FIG.10

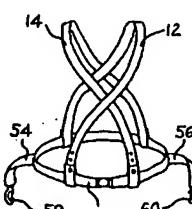


Illustration 4

Comparison of substantially parallel and non-parallel straps.

As these comparison views clearly demonstrate, shoulder straps 40 and 42 are substantially parallel to each other. In contrast, straps 12 and 14 are not parallel to each other, in fact, the straps cross each other not only once but twice along their lengths. Straps 12 and 14 of Ward are the quintessential antithesis of being “substantially parallel” to each other. Furthermore, the specification in Ward contradicts the Examiner stating that, “the straps cross over each other both front and rear.” (Col. 3, lns. 31-32.) Virtually every figure in the Ward patent, like figure 10 shown above, shows straps 12 and 14 crossing each other both front and rear.<sup>2</sup> Accordingly, Claim 13 should be allowable and withdrawal of the rejection is respectfully

<sup>2</sup> Fig. 4 of Ward does not teach straps 12 and 14 to be positioned substantially parallel to each other. This view is simply a detail view demonstrating two different embodiments of the strap. (See col. 4, lns. 27-29.) Strap 12 from Fig. 4 is used in Fig. 3 and strap 14 is used in Fig. 2. (See col. 5, lns. 8-11.)

requested.

If upon consideration of the above the Examiner should feel that there remain outstanding issues in the present application that could be resolved, the Examiner is invited to contact Applicant's patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. To the extent additional fees are required, please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 02-1010 (31274/82679) and please credit any excess fees to such deposit account.

Respectfully submitted,

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